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United States of America

In the

Supreme Court of the United States

No. 669

THE FRATERNAL ORDER OF POLICE, a corporation not for profit, organized and existing under the laws of the State of Michigan, also JOSEPH JOHNSON, LODGE No. 102 OF THE CITY OF LANSING, MICHIGAN, a subordinate Lodge of the Fraternal Order of Police,

Plaintiffs and Petitioners,

v.

D. D. HARRIS, ELMER HAMMOND, LAWRENCE DROLETT, ALOYSIUS GROSS, C. E. CARTER, C. I. HUNTER, C. BOELIO, CHAS. VAN NOTE, as Members of the Lansing City Police and Fire Commission as provided by the Lansing City Charter,

Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

BRIEF OF THE CORPORATION COUNSEL OF THE CITY OF DETROIT AS AMICUS CURIAE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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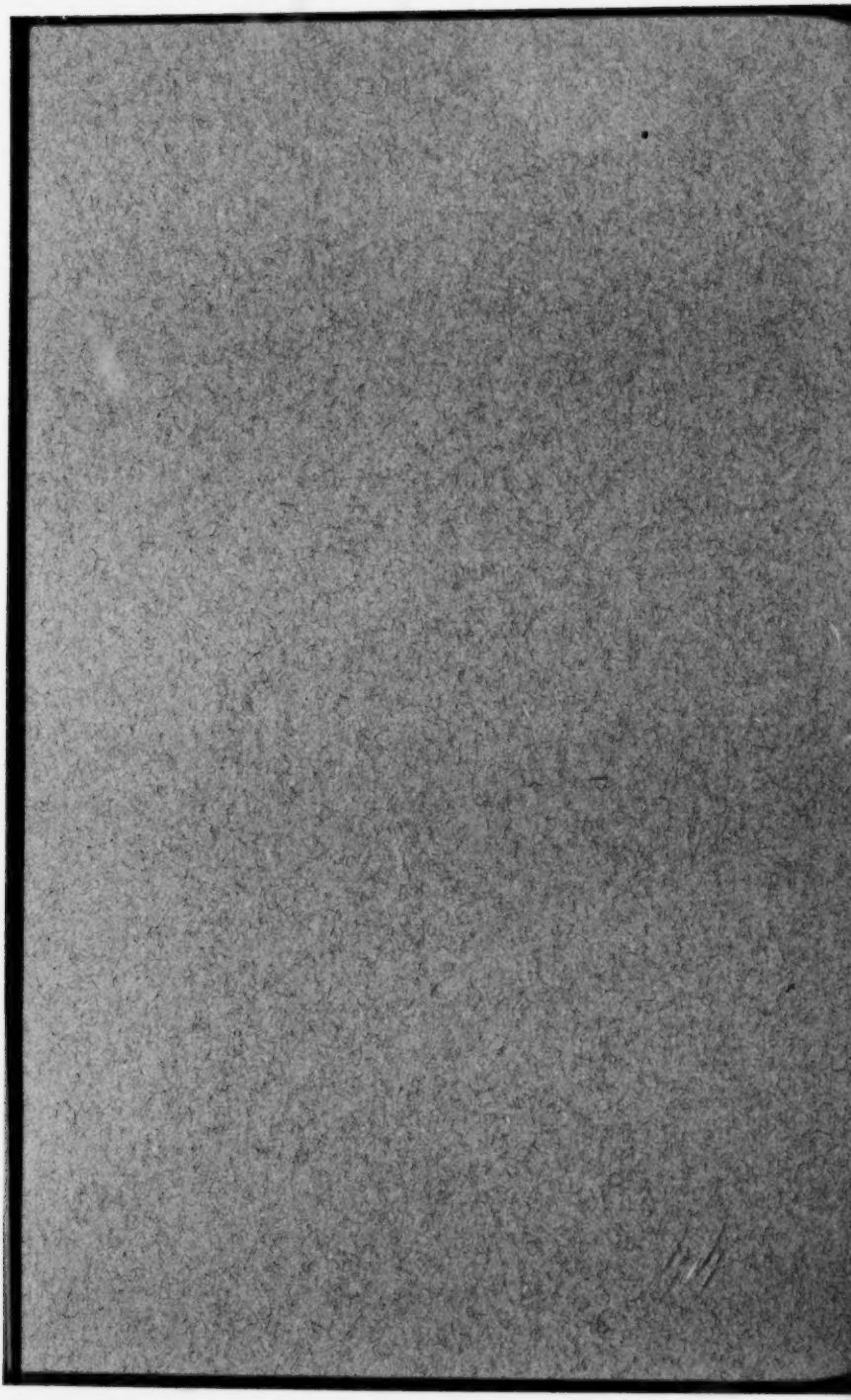

SUBJECT INDEX

	Page
Consent to Filing of Brief as Amicus Curiae.....	1-2
Brief in Opposition to Petition for Writ of Certiorari	3-14
I. Certiorari to the United States Supreme Court does not lie because plaintiffs have no interest in the subject matter of the suit	5-9
II. Certiorari to the United States Supreme Court will not lie because the decree of the State Court is based upon non-federal grounds adequate to support the same.....	9-14

INDEX TO AUTHORITIES AND TEXTS CITED

Brownell v. Russell, 57 Atl. 103 (Vt.).....	12
Coane v. Geary, 293 Ill. App. 199; 18 N. E. 2d 719...	12
Cronin v. City of Denver, 192 U. S. 108, page 114...	6
Cusack v. City of Chicago, 242 U. S. 526, at page 530	7
Fox Film Corp. v. Mueller, 296 U. S. 207, 210, 211...	10
Frederick v. Owens, 35 Ohio Circuit Decisions 538..	12
Hatch v. Reardon, 204 U. S. 152, page 160.....	7
Hutchinson, Captain Fire Bureau of City of Pittsburgh v. McGee, Mayor, 278 Pa. 119; 122 Atl. 234	12
Liberty Warehouse Co. v. Burley Tobacco Growers Cooperative Market Association, 276 U. S. 71, page 88	6
McGoldrick v. Gulf Oil Corp., 309 U. S. 2.....	10
Robertson and Kirkham's Jurisdiction of the Supreme Court of the United States, p. 149.....	10
San Antonio Fire Fighters' Local Union No. 84 v.. Bell, et al., 223 S. W. 506 (Texas).....7, 11, 12	
Standard Stock Food Co. v. Wright, 225 U. S. 540, at page 550.....	6
36 Corpus Juris, Sec. p. 150.....	10

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Defendants and Respondents

Certiorari to the Supreme Court of the State of Michigan

CONSENT TO FILING OF BRIEF AS AMICUS CURIAE

We, the undersigned, being attorneys for all of the parties to the above entitled cause, do hereby consent to the filing of *amicus curiae* briefs in this cause by Paul H. Krause, Corporation Counsel, and John H. Witherspoon

and Nathaniel H. Goldstick, Assistants Corporation Counsel as *amicus curiae.*

Edward N. Barnard,
Attorney for Plaintiff and Petitioner.

Paul G. Eger,
City Attorney, Lansing, Michigan, Attorney for Defendants and Respondents.

Dated: Detroit, Michigan,
March 6, 1944.

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(Unless otherwise clearly shown by context, figures in parentheses refer to pages of the printed record)

This brief in opposition to the petition for writ of certiorari filed by the petitioner is presented by the Corporation Counsel of the City of Detroit as *amicus curiae*. Written consent has been given by counsel for all the parties, a copy of which is attached hereto.

A similar suit between the Fraternal Order of Police, petitioner herein, and the Detroit Police Department is now pending in the Wayne Circuit Court at Detroit. The City of Detroit is, therefore, vitally interested in the outcome of this litigation.

The Fraternal Order of Police, a non-profit corporation, of Michigan, and the Joseph Johnson Lodge, a subordinate lodge of the Fraternal Order of Police, as plaintiffs, filed a bill of complaint against the Lansing City Police and Fire Commission to restrain the enforcement of a rule adopted by the Commission forbidding any superior officer of the Lansing Police Department from becoming a member of the Fraternal Order of Police; that membership be confined to members of the Lansing Police Department with the exception of superior officers and that the no rank and file officer be permitted to join in the event the local lodge takes into membership so-called associate or honorary members. The superior officers of the Lansing Department were the chief, the captain, four lieutenants and six sergeants (50). None of these superior officers appeared as party plaintiffs. No averments were contained in the bill of complaint alleging any grievance or the deprivation of any right on the part of any of the superior officers. No superior officer appeared as a witness at the trial and there was no showing that any superior officer complained of the rule or that any such superior officer was being deprived of any constitutional rights (50). No rank and file officer appeared either as complainant or as a witness.

The trial judge in his opinion stated:

> "None of the individuals affected is a party to the action" (51).

In upholding the validity of the rule promulgated by the Lansing Board of Police and Fire Commissioners

both the Trial Court and the Michigan Supreme Court held (306 Mich. 68) that neither the plaintiffs nor the individuals affected thereby, had they been parties to the litigation, were deprived of any constitutional rights. The case was decided on the proposition that the Board having control of the Police Force—a quasi military organization —it was authorized to adopt reasonable rules and regulations governing the Police Department.

The Court determined that as long as the members of the Police Force desired to remain in the employment of the City of Lansing as police officers, they were required to surrender some of their presumed private rights and subject themselves to the reasonable rules and regulations of the Police Department. The Court held that the adoption of the Resolution was within the scope of the authority granted to the Board by the Charter of the City of Lansing and that the adoption of the Resolution was neither arbitrary nor unreasonable.

In dismissing the bill of complaint, the Court held:

> "Neither the plaintiffs nor the individuals concerned are deprived of any constitutional right. Observance of the rule is essential to membership in the Police Force. It is analagous to other disciplinary regulations adopted and enforced under the discretionary authority by the Board that the people have created for the management and control of the Police and Fire Departments" (54).

I.

CERTIORARI TO THE UNITED STATES SUPREME COURT DOES NOT LIE BECAUSE PLAINTIFFS HAVE NO INTEREST IN THE SUBJECT MATTER OF THE SUIT

In the plaintiffs' attempt to champion the claimed constitutional rights of superior officers of the Lansing Police Department none of these officers appeared as parties to

the suit, nor as witnesses in the case. Nowhere does it appear that they are asserting any such right or that the plaintiffs are authorized to assert such right for them.

> "Standing to invoke adjudication is lacking where the right sought to be championed is that of third parties * * * where the Supreme Court review of the decision of a state court is sought, the party seeking review 'must show that enforcement of the challenged judgment would deprive it —*not another*—of some right arising under the constitution or laws of the United States properly asserted below.' In order to give the Supreme Court jurisdiction to review the decision of a state court denying an asserted federal right, '*that right must be one of the plaintiff in error and not of a third person only.*' *Robertson & Kirkham's Jurisdiction of the Supreme Court of the United States,* pages 478 and 479."

See also: *Liberty Warehouse Co. v. Burley Tobacco Growers Cooperative Market Association,* 276 U. S. 71, p. 88.

In the case of *Cronin v. City of Denver,* 192 U. S. 108, p. 114, this court held that a saloonkeeper had no right to challenge the validity of the provision of a state law prohibiting the sale of liquor to women. In refusing to recognize the claim of the saloonkeeper, this Court said:

> "What cause of action, then, has plaintiff in error? He is not a female nor delegated to champion any grievance females may have under the ordinance, if they have any."

In *Standard Stock Food Co. v. Wright,* 225 U. S. 540, at page 550, it was stated:

> "* * * one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within

> the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution." (*Southern Ry. v. King,* 217 U. S. 524, 534; See also *Tyler v. The Judges,* 179 U. S. 405; *Turpin v. Lemon,* 187 U. S. 51, 60; *Hooker v. Burr,* 194 U. S. 415; *Hatch v. Reardon,* 204 U. S. 152, 160; *Collins v. Texas,* 223 U. S. 288, 295.)

In *Cusack v. City of Chicago,* 242 U. S. 526, at page 530, it was held:

> "He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property."

See also: *Hatch v. Reardon,* 204 U. S. 152, p. 160.

In the case of *San Antonio Fire Fighters' Local Union No. 84 v. Bell, et al.,* 223 S. W. 506 (Texas), the plaintiff, a local voluntary Union Labor organization instituted suit against the Mayor, Fire Chief and other City officials, alleging a conspiracy to break up the Union and intimidate members of the Fire Department belonging to the Union by threatening to discharge them unless they withdrew their membership. An injunction was sought to prevent the discharge of members of the Union. While the suit was brought in the name of the Union, the bill filed alleged that the suit was brought not only for the Union but in behalf of each member thereof. The defendants filed a demurrer which was sustained and the bill was dismissed. The Union appealed, the Appellate Court in sustaining the demurrer held as follows:

> "The main object in permitting joint-stock companies or associations to sue was to prevent the necessity of making the individual stockholders or

members thereof as parties to the suit. As in suits by partnerships, the individual rights of the members cannot be maintained and individual wrongs redressed through a suit by the association. It must be a joint right that is to be enforced, or a joint wrong that is to be redressed. Appellant sues to redress a wrong to the association which it claims arose by an anticipated wrong which may be inflicted on its members severally. It pleads that an attack will be made upon it, if its members should be dismissed from the service of the city by the mayor and commissioners.

Article 6149 is based upon convenience and economy, in permitting all the members of a joint-stock company or association to sue, in the name of the association in order to conserve a joint right, or redress a joint wrong, and it was never intended that the name of the association could be used to ascertain and protect the several rights of the members or redress their several wrongs. *Mayhew Co. v. Valley Wells Ass'n.*, 216 S. W. 225.

We are of the opinion, not only that appellant could not sustain a suit shown to be a several and not a joint one, but also that suits by or against a joint-stock company or association can be sustained only as to property rights in which the membership is jointly interested. The very language of the statute seems to imply that the company or association can sue or be sued only about property rights, for it limits the right to those companies 'doing business in the state,' showing an intent to confine such suits to matters of business. There is no allegation in the petition of any property right of the association that was threatened by the mayor and commissioners, but from the petition it clearly appears that no right is threatened, except that of the individual members, in which the company or association had no property right whatever. No contract between the association and the city of San Antonio was being threatened or invaded. It

had no contract with the city, and no right belonging to it was about to be assailed. It had no right upon which to base an application for an injunction."

* * * * *

"The petition fails to show that any rights have been invaded, held by appellant, or any wrongs committed against it, and it has no authority to act as guardian for its membership and make their demands its demands. Each of them, as an American citizen, will find the courts open, and the judiciary ready to protect him against any invasion of his rights, whether personal or property rights."

The Bill praying for injunctive relief is filed by a non-profit organization that has no contractual or other relationship with the City of Lansing. The actions of the Lansing Police and Fire Commission, even if set in motion against the officers of the department, could in no way inflict property injury upon the Fraternal Order of Police. The organization's right to freedom of assemblage and due process has not been infringed upon.

Clearly if the plaintiffs have no cause for redress in this case they cannot question the constitutionality of the resolution enacted by the Police and Fire Commission of Lansing.

II.

CERTIORARI TO THE UNITED STATES SUPREME COURT WILL NOT LIE BECAUSE THE DECREE OF THE STATE COURT IS BASED UPON NON-FEDERAL GROUNDS ADEQUATE TO SUPPORT THE SAME

"Where the decision of the State court is deemed to rest upon a non-federal ground and independently and adequately supports the State court judg-

ment, the Supreme Court will not exercise jurisdiction to review, notwithstanding the raising of federal questions upon the State court record or the decisions of those questions by the State Court."

Robertson and Kirkham's Jurisdiction of the Supreme Court of the United States, p. 149.

"In order to authorize a review by the United States Supreme Court of a decision of a State court, it is usually necessary that a federal question shall have been decided by the State court or at least necessarily involved in the judgment. Hence a judgment resting on grounds adequate to sustain it, independent of any federal question, is not reviewable * * *."

36 Corpus Juris, Sec. p. 150.

Fox Film Corp. v. Mueller, 296 U. S. 207, 210, 211.

McGoldrick v. Gulf Oil Corp., 309 U. S. 2.

The resolution passed by the Lansing City Police and Fire Commission made no attempt to regulate the affairs and conduct of the Fraternal Order of Police. The resolution established a rule for the police officers employed by the City of Lansing. Violation of the rule subjected violators to disciplinary action by the Commission. No violation of the regulation was shown to have taken place, nor was there any showing that the Commission had taken any action against any officers who had violated or contemplated the violation of such rule. No officer had been dismissed nor had any other disciplinary action been taken against any officer for violation of the rule. The Bill merely alleges that a threat existed that police officers would be removed because of a violation of the rule. The Bill in this case was filed by the Fraternal Order of Police and the Joseph Johnson Lodge No. 102 of the City

of Lansing, Michigan, a subordinate Lodge of the Fraternal Order of Police. It was not filed by any police officer who might be faced with a possible ouster for violation of the rule. Even if the action were brought in the name of a superior police officer of the Lansing Police Department, the allegation of a mere threat, without any other action on the part of the Lansing Police and Fire Commission would be insufficient to warrant equitable interference.

San Antonio Fire Fighters v. Bell, supra.

The decision of the Michigan Supreme Court and of the Trial Judge expressly held that there was no constitutional question involved. The regulations of the Lansing Commission did not deprive the members of the Lansing Police Department from joining the Fraternal Order of Police,—this they could do to their hearts content. What the Lansing Commission did do was to promulgate a rule which prohibited superior officers from joining the Fraternal Order of Police and retaining their status as superior officers of the Lansing Police Department. The Lansing Commission, in the exercise of its authority to control the police force, has taken the position that their employees, to-wit: the superior officers of the Police Department, in order to remain superior officers, cannot join the Fraternal Order of Police and that the rank and file cannot belong to the organization if associate or honorary members are permitted to join. As individuals the men have the right to join the organization. If they wish to continue as police officers they are limited in that right by the rules and regulations promulgated by their employers, the City of Lansing, through its Commission.

Rules and regulations of this type have been upheld in many cases:

Hutchinson, Captain Fire Bureau of City of Pittsburgh v. McGee, Mayor, 278 Pa. 119; 122 Atl. 234;

Brownell v. Russell, 57 Atl. 103 (Vt.);

Coane v. Geary, 298 Ill. App. 199; 18 N. E. 2d 719;

Frederick v. Owens, 35 Ohio Circuit Decisions 538;

San Antonio Fire Fighters Local Union 84 v. Bell, supra.

The Supreme Court of Michigan not only pointed out that the Lansing Police & Fire Commission had the express authority under the Charter of the City of Lansing to pass the regulation in question, and declared that the court was without authority to interfere with the administrative functions of the Commission, the Supreme Court went further, it pointed out that there was substantial basis for the regulation adopted by the Lansing Commission and determined that there was ample justification for the adoption of the rule by the Commission. The Supreme Court stated:

> "The constitution and by-laws of plaintiff's national, state and local organizations which were received in evidence provide in effect that citizens may become associate members upon payment of dues of not less than $5 per year, and such associate members will be furnished 'a membership card' and car 'emblem.' One would be naive indeed, to assume that such automobile emblem did not carry with it the intimation of special privileges to associate members. This of itself is enough to require the determination that the existence of plaintiff organization within the law-enforcement body of a municipality is contrary to public policy."

The Lansing City Police and Fire Commission charged with control of the Police Department deemed inimical to the best interests of the City of Lansing the operation of a Lodge of the Fraternal Order of Police, that took in superior officers of the force as members and also extended membership to outsiders as honorary or associate members. This was not an unsual or strained conclusion. The rule limiting or restricting the right of a police officer to join an organization, the membership of which might interfere or conflict with his duties as a police officer and his loyalty to the people he serves, has long represented the policy of well regulated police departments. It is a rule that forms an integral part of the contract of employment of the officer. He knows when he joins the force he may not be able to join an organization with secrets and rituals, with national officers and organizers demanding obedience to orders and with outsiders as honorary and associate members. The people of the community have a right to the enforcement of this rule. No police officer who wants to retain his employment has a right to assert that his constitutional privileges are abridged if the people who employ him insist that he must obey the reasonable rules and regulations of the Police Department. If the rule is not to his liking he is free to seek employment elsewhere and become a joiner of any organization willing to receive him.

No federal questions were involved in the decision of the Supreme Court of Michigan.

It is respectfully submitted that the petition for Certiorari should be denied, first: because the plaintiffs have no such interest that entitles them to the writ, and second: because the decision of the Michigan Supreme Court was based on adequate non-federal grounds which were broad,

independent and tenable and no federal constitutional questions were involved.

Respectfully submitted,

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